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GARRISON GUILT

Newly opened files reveal that Jim Garrison — the New Orleans prosecutor, Oliver Stone hero and J.F.K. conspiracy hunter — himself conspired to frame an innocent man. BY GERALD POSNER

EVEN AFTER 2,000 BOOKS AND A MAJOR HOLLYWOOD FILM, conspiracy theorists are still divided over Jim Garrison's 1969 prosecution of the New Orleans businessman Clay Shaw, the only trial that ever resulted from the assassination of President John F. Kennedy. While Shaw's acquittal prompted most historians to conclude that Garrison had abused his powers, supporters of the District Attorney speculated that the original case files might prove otherwise. Now, on the eve of the public release of some of those files, it is finally possible to settle whether the case against Shaw was a fraud.

The problem confronting Garrison when he began his investigation was separating facts from rumors. The assassin, Lee Harvey Oswald, *had* lived in New Orleans only months before the assassination. But Garrison persisted in following leads even when they were quickly discredited: that an eccentric homosexual, David Ferrie, taught Oswald how to shoot and had visited Texas on the evening of the assassination; and that Oswald, together with some flamboyant homosexuals, had visited a local attorney, Dean Andrews, who claimed his legal bill was paid by a man known only as "Clay Bertrand." Using these assertions, Garrison soon said the plot to kill the President was "a homosexual thrill-killing." (He claimed that Oswald was a "switch-hitter" and that Jack Ruby was gay.)

What Garrison actually discovered should have raised red flags. The source of the Ferrie story was a private investigator, Jack Martin, an alcoholic who had been in prisons and mental institutions. Within a week of the assassination, he confessed to the F.B.I. that he had concocted the account while drunk. Andrews, who had given widely different descriptions of the alleged Clay Bertrand, also recanted his yarn after the F.B.I. failed to find anyone in New Orleans who ever heard the name Bertrand. But in 1966, when Martin and Andrews revived their early tales, Garrison overlooked the inconsistencies, a pattern he repeated throughout the case.

In early 1967, Ferrie, still a suspect, died. Since the case was at a halt, some of Garrison's staff advised that the investigation be dropped. Although Ferrie died of natural causes, Garrison speculated the cause was murder or suicide, and was confident he was on the right track. The only suspect left, though, was the mysterious Bertrand. Garrison had shocked his staff months earlier by telling them he thought Clay Shaw, a prominent businessman and a member of the city's social elite, was Clay Bertrand. The fact that Garrison knew Shaw was a homosexual fit his theory. He was untroubled that Shaw, at 6 feet 4 inches tall and with shocking white hair, fit none of Andrews's descriptions. Instead, he told his staff, the name Clay Bertrand was the key, since homosexuals "always change their last names, but never their first names." A week after Ferrie's death, Shaw was arrested and charged with being part of a conspiracy to assassinate Kennedy.

During the height of the Shaw investigation, there were five five-drawer file

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cabinets of documents. Today, only one cabinet remains. "That's all that was here when we took over from Garrison on April 1, 1974," says Harry Connick Sr., the current District Attorney. He invited me to examine the files before he was scheduled to send them to the Assassination Records Review Board, a Presidentially appointed group. Louis Ivon, Garrison's chief investigator, confirmed to me that the staff pruned the investigatory files before Connick took charge; they feared an abuse of process suit by Shaw, and possible Federal prosecution against Garrison. Even so, these remaining records confirm that the Shaw prosecution was a travesty.

THE DAY AFTER SHAW'S ARREST, FOUR OF GARRISON'S INVESTIGATORS grilled Dean Andrews, the local attorney. In the files, there are 10 pages of handwritten notes about that interrogation. Andrews did not equivocate when asked if Clay Shaw was Clay Bertrand — "No." Although that answer destroyed the crux of the charge against Shaw, Garrison ignored it. Similar was the handling of a man named Vernon Bundy, in jail for a parole violation. He testified that while he was shooting heroin along the lake one day in 1963, he saw Shaw meet Oswald. At the trial, Bundy identified Shaw from his slightly stiff walk — "the twisting of his foot had frightened me that day on the sea wall when I was about to cook my drugs." The defense did not shake his basic story.

Looking through the files now, I discovered a March 16, 1967, transcript of an interview between Bundy and three Garrison investigators. In that talk, only two weeks after Shaw's arrest, Bundy described the "Oswald" character as a "real junkie," and said his name was "Pete." Not once in a 12-page typewritten statement did Bundy mention any unusual walk or gait. By the time of his testimony, he had dropped any inconsistencies, and his memory had "improved" favorably for the prosecution.

The most telling abuse shown by the files probably concerns four witnesses from Clinton, La., who were used to bolster a sighting of Oswald, Ferrie and Shaw. The witnesses gave almost uniform trial testimony, saying that during a Congress of Racial Equality voter-registration drive in the late summer of 1963, a black Cadillac, driven by Shaw, stopped in town. Ferrie and Oswald were passengers. This testimony seemed strong. Yet, the files confirm suspicions that the witnesses initially gave dramatically conflicting statements to investigators. Some had failed to identify Oswald, Shaw or Ferrie. Others had described the Cadillac as an "old and beat-up Nash or a Kaiser," or instead of three men in the car, they originally said four, or two, or a woman with a baby. Some swore the Oswald look-alike was in a voter-registration line, while a few thought he applied for a job at a mental institution, and another claimed to have cut his hair. Several placed the sightings in October, when Oswald was in Dallas, and two thought Jack Ruby drove the car.

Moreover, the files reveal new information that Garrison's investigators had tried in vain to find support for the alleged sighting. They had combed the Clinton area; more than 100 local residents failed to recall a dark car or strangers in the small town. At a separate meeting of 60 CORE volunteers, investigators explained the story and projected pictures of Oswald, Shaw and Ferrie. No one remembered the incident.

But in an era when defense attorneys were not entitled to exculpatory material or contradictory witness statements, it was up to the prosecutor not to proceed with unreliable evidence. Garrison exercised no such restraint. In a March 24, 1967, memo from Lynn Loisel, a prosecution investigator, to Garrison, a potential witness was adamant that Clay Shaw was not Clay Bertrand. That document was hidden not just from defense lawyers but from the rest of the investigative staff. At the top is written: "Do Not DISTRIBUTE! Not clear. Re-interview needed when facts are straightened out."

The excesses shown by the newly opened Garrison files do not stop at prosecutory persecution. They also disclose a previously unknown aspect — that Garrison secretly taped the conversations of journalists who were critical of him. Jack Martin, the private investigator who had first spun the tale about Ferrie and Oswald, recorded most of the conversations. On the tapes and in their transcripts in the files, Martin and others assured people they spoke to that their telephones were not tapped. The surveillance might have been legal under Louisiana law (the consent of one party to the conversation is necessary), but misrepresentations like those from Martin cloud the issue. Other surveillances in the files raise the issue as to whether Garrison's investigators broke the law. When Ferrie's godson was arrested on a narcotics charge, prosecutors offered to drop it if he taped conversations with journalists. Several of Garrison's investigators also unsuccessfully tried to record a meeting, in a car, between two NBC reporters and an unidentified third person. There is no evidence of consent to the recording, nor a court order authorizing the surveillance.

Rumors that Garrison bugged the apartments of some potential witnesses are also confirmed in the files. Journalists like James Phelan, at The Saturday Evening Post, and George Lardner, at The Washington Post, were routinely recorded when they visited the apartments.

THE NEWLY OPENED FILES PROVIDE YET ANOTHER INSIGHT — INTO Garrison's personality and motivation. His view of who was in the conspiracy evolved radically, from a small group of homosexuals to members of the "military-industrial complex." A thick folder labeled with his name contained documents and handwritten notes to himself. It included a map of the United States titled "Massive Retaliation Complex," which names potential witnesses or suspects in cities and cross-links them to defense contractors. In a separate memo, Garrison listed people tangentially connected to Oswald (for example, the librarian from whom Oswald checked out books) and wrote their supposed connections to the military-industrial complex.

Grim Jim Garrison, far left, in 1967. Clay Shaw, above right, off to court in 1969 with his attorney, Irvin Dymond. Kevin Costner, top right, as Garrison in the film "J.F.K."

But theories about the military-industrial complex did not impress the Shaw jury. They took only 45 minutes to return a not-guilty verdict. That meant little to Garrison, who viewed the jury's decision as an oversight in an otherwise solid case. He later charged Shaw with perjury, an action that an appeals court enjoined him from continuing when it concluded he had acted in bad faith.

When I finished reviewing Garrison's files, I again met with District Attorney Connick. I asked whether Oliver Stone, whose movie "J.F.K." portrayed Garrison as a lone hero, had ever asked to see Garrison's files. "Heavens no. They did not even ask about them. I don't think they were probing anymore. I had the impression that Oliver Stone knew what he was going to do, had his mind made up and wasn't going to be bothered by the facts. For history, that's a shame."

Did Stone ever ask for your opinion? "Yes, he did," Connick says. "I said I thought it was one of the grossest, most extreme miscarriages of justice in the annals of American judicial history. And Stone said, 'Well, we are going to do the movie anyway,' as if I was suggesting he shouldn't do it. I said: 'Well, do whatever you want to do. I have nothing to say about that. You were asking and I was telling you that it was just a miscarriage of justice. An innocent man was plucked out of somebody's mind and made a defendant in a criminal case.' " ■